

**HEALTH AND HUMAN SERVICES SUNSET
AND REPORTING AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill removes the sunset provisions for certain programs in the Department of Health and the Department of Human Services and reduces some reporting requirements to the Health and Human Services Interim Committee.

Highlighted Provisions:

This bill:

- ▶ amends the Department of Health's annual reporting requirement to the Health and Human Services Interim Committee for aids testing data, abortion informed consent data, and the Utah Medical Assistance Program;
- ▶ removes the following programs from the legislative sunset act:
 - Family Health Services;
 - Utah Medical Examiner Act;
 - Department of Health Organization; and
 - Safe Relinquishment of Newborn Child;
- ▶ requires the Department of Health to report to the Legislative Executive Appropriations Committee or the Health and Human Services Appropriations Subcommittee if the Department initiates an amendment to an existing Medicaid waiver;
- ▶ repeals statutes regarding the 1996 Medicaid freedom of choice waiver and the 1995 Section 1315 Medicaid waiver; and
- ▶ makes conforming and technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-6-3.5, as last amended by Chapter 13, Laws of Utah 1998

26-18-3, as last amended by Chapters 321 and 324, Laws of Utah 2003

26-18-305, as last amended by Chapter 13, Laws of Utah 1998

62A-4a-902, as enacted by Chapter 115, Laws of Utah 2001

63-55-226, as last amended by Chapter 86, Laws of Utah 2005

63-55-262, as last amended by Chapter 134, Laws of Utah 2001

76-7-305.5, as last amended by Chapter 13, Laws of Utah 1998

REPEALS:

26-18-3.7, as last amended by Chapters 8 and 18, Laws of Utah 2002, Fifth Special Session

26-18-401, as last amended by Chapter 53, Laws of Utah 2001

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-6-3.5** is amended to read:

26-6-3.5. Reporting AIDS and HIV infection -- Anonymous testing.

(1) Because of the nature and consequences of Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus infection, the department shall:

(a) require reporting of those conditions; and

(b) utilize contact tracing and other methods for "partner" identification and notification. The department shall, by rule, define individuals who are considered "partners" for purposes of this section.

(2) (a) The requirements of Subsection (1) do not apply to seroprevalence and other epidemiological studies conducted by the department.

(b) The requirements of Subsection (1) do not apply to, and anonymity shall be provided in, research studies conducted by universities or hospitals, under the authority of institutional review boards if those studies are funded in whole or in part by research grants and if anonymity is required in order to obtain the research grant or to carry out the research.

(3) For all purposes of this chapter, Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus infection are considered communicable and infectious diseases.

(4) The department may establish or allow one site or agency within the state to provide anonymous testing.

(a) The site or agency that provides anonymous testing shall maintain accurate records regarding:

(i) the number of HIV positive individuals that it is able to contact or inform of their condition;

(ii) the number of HIV positive individuals who receive extensive counseling;

(iii) how many HIV positive individuals provide verifiable information for partner notification; and

(iv) how many cases in which partner notification is carried through.

~~[(b) A statistical report of the information maintained under Subsection (4)(a) shall be presented to the Health and Human Services Interim Committee on an annual basis. The information collected under Subsection (4)(a) and the reports required by this subsection shall be maintained and presented in such a way that no individual is identifiable.]~~

~~[(c)]~~ (b) If the information and reports indicate anonymous testing is not resulting in partner notification, the department shall phase out the anonymous testing program allowed by this subsection.

Section 2. Section **26-18-3** is amended to read:

26-18-3. Administration of Medicaid program by department -- Disciplinary measures and sanctions -- Funds collected.

(1) The department shall be the single state agency responsible for the administration of the Medicaid program in connection with the United States Department of Health and Human Services pursuant to Title XIX of the Social Security Act.

(2) (a) The department shall implement the Medicaid program through administrative rules in conformity with this chapter, Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the requirements of Title XIX, and applicable federal regulations.

(b) (i) The rules adopted under Subsection (2)(a) shall include, in addition to other rules necessary to implement the program, the standards used by the department for determining eligibility for Medicaid services, the services and benefits to be covered by the Medicaid program, and reimbursement methodologies for providers under the Medicaid program.

(ii) If the department implements a change in the Medicaid State Plan, initiates a new Medicaid waiver, ~~[submits]~~ initiates an amendment to an existing Medicaid waiver, or initiates a rate change requiring public notice under state or federal law, the department shall, prior to adopting the change, report to either the Legislative Executive Appropriations Committee or the Legislative Health and Human Services Appropriations Subcommittee and include in the report:

(A) the proposed change in services or reimbursement;

(B) the effect of an increase or decrease in services or benefits on individuals and families;

(C) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and

(D) the effect of any proposed increase of benefits or reimbursement on current and future appropriations from the Legislature to the department.

(iii) Any rules adopted by the department under this Subsection (2) are subject to review and reauthorization by the Legislature in accordance with Section 63-46a-11.5.

(3) The department may, in its discretion, contract with the Department of Human Services or other qualified agencies for services in connection with the administration of the Medicaid program, including but not limited to the determination of the eligibility of individuals for the program, recovery of overpayments, and enforcement of fraud and abuse laws, consistent with Section 26-20-13, to the extent permitted by law and quality control services.

(4) The department shall provide, by rule, disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the program, provided that sanctions imposed administratively may not extend beyond:

(a) termination from the program;

(b) recovery of claim reimbursements incorrectly paid; and

(c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

(5) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX of the federal Social Security Act shall be deposited in the General Fund as nonlapsing dedicated credits to be used by the division in accordance with the requirements of that section.

(6) (a) In determining whether an applicant or recipient is eligible for a service or

benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department shall, if Subsection (6)(b) is satisfied, exclude from consideration one passenger vehicle designated by the applicant or recipient.

(b) Before Subsection (6)(a) may be applied:

(i) the federal government must:

(A) determine that Subsection (6)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;

(B) extend a waiver to the state permitting the implementation of Subsection (6)(a); or

(C) determine that the state's waivers that permit dual eligibility determinations for cash assistance and Medicaid are no longer valid; and

(ii) the department must determine that Subsection (6)(a) can be implemented within existing funding.

(7) (a) For purposes of this Subsection (7):

(i) "aged, blind, or disabled" shall be defined by administrative rule; and

(ii) "spend down" means an amount of income in excess of the allowable income standard that must be paid in cash to the department or incurred through the medical services not paid by Medicaid.

(b) In determining whether an applicant or recipient who is aged, blind, or disabled is eligible for a service or benefit under this chapter, the department shall use 100% of the federal poverty level as:

(i) the allowable income standard for eligibility for services or benefits; and

(ii) the allowable income standard for eligibility as a result of spend down.

Section 3. Section **26-18-305** is amended to read:

26-18-305. Report on implementation.

The department shall report to the Health and Human Services Interim Committee by November 1, 1994, and every year thereafter on the implementation of the grant program for primary care services. The report shall include a description of the scope and level of coverage provided to low-income persons by primary care grant programs ~~[and by the medical assistance program established in Section 26-18-10. The report shall also include recommendations to minimize the loss of revenue by hospitals that serve a disproportionate share of persons under Section 26-18-10].~~

Section 4. Section **62A-4a-902** is amended to read:

62A-4a-902. Definitions.

(1) (a) "Adoption assistance" means direct financial subsidies and support to adoptive parents of a child with special needs or whose need or condition has created a barrier that would prevent a successful adoption.

(b) "Adoption assistance" may include state medical assistance, reimbursement of nonrecurring adoption expenses, or monthly subsidies.

(2) "Child who has a special need" means a child who cannot or should not be returned to the home of his biological parents and who meets at least one of the following conditions:

(a) the child is five years of age or older;

(b) the child is under the age of 18 with a physical, emotional, or mental disability; or

(c) the child is a member of a sibling group placed together for adoption.

(3) "Monthly subsidy" means financial support to assist with the costs of adopting and caring for a child who has a special need.

(4) "Nonrecurring adoption expenses" means reasonably necessary adoption fees, court costs, attorney's fees, and other expenses which are directly related to the legal adoption of a child who has a special need.

(5) "State medical assistance" means the Medicaid program and medical assistance as defined in Subsections 26-18-2(4) and (5)[~~not limited to a prepaid health care delivery system as defined in Section 26-18-3.7~~].

(6) "Supplemental adoption assistance" means financial support for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

Section 5. Section **63-55-226** is amended to read:

63-55-226. Repeal dates, Title 26.

~~[(1) Title 26, Chapter 1, Department of Health Organization, is repealed July 1, 2006.]~~

~~[(2) Title 26, Chapter 4, Utah Medical Examiner Act, is repealed July 1, 2010.]~~

~~[(3)]~~ (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2015.

~~[(4) Title 26, Chapter 10, Family Health Services, is repealed July 1, 2010.]~~

~~[(5)]~~ (2) Title 26, Chapter 23b, Detection of Public Health Emergencies Act, is

187 repealed July 1, 2009.

188 ~~[(6)]~~ (3) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1,
189 2014.

190 Section 6. Section **63-55-262** is amended to read:

191 **63-55-262. Repeal dates, Title 62A.**

192 ~~[(1) Section 62A-4a-202.7, Pilot Program for Differentiated Responses to Child Abuse~~
193 ~~and Neglect Reports, is repealed July 1, 2005.]~~

194 ~~[(2) Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child, is~~
195 ~~repealed July 1, 2006.]~~

196 Section 7. Section **76-7-305.5** is amended to read:

197 **76-7-305.5. Requirements for printed materials and informational video --**
198 **Annual report of Department of Health.**

199 (1) In order to insure that a woman's consent to an abortion is truly an informed
200 consent, the Department of Health shall publish printed materials and produce an informational
201 video in accordance with the requirements of this section. The department and each local
202 health department shall make those materials and a viewing of the video available at no cost to
203 any person. The printed material and the informational video shall be comprehensible and
204 contain all of the following:

205 (a) geographically indexed materials informing the woman of public and private
206 services and agencies available to assist her, financially and otherwise, through pregnancy, at
207 childbirth, and while the child is dependent, including services and supports available under
208 Section 35A-3-308. Those materials shall contain a description of available adoption services,
209 including a comprehensive list of the names, addresses, and telephone numbers of public and
210 private agencies and private attorneys whose practice includes adoption, and explanations of
211 possible available financial aid during the adoption process. The information regarding
212 adoption services shall include the fact that private adoption is legal, and that the law permits
213 adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care. The printed
214 information and video shall present adoption as a preferred and positive choice and alternative
215 to abortion. The department may, at its option, include printed materials that describe the
216 availability of a toll-free 24-hour telephone number that may be called in order to obtain,
217 orally, the list and description of services, agencies, and adoption attorneys in the locality of the

218 caller;

219 (b) truthful and nonmisleading descriptions of the probable anatomical and
220 physiological characteristics of the unborn child at two-week gestational increments from
221 fertilization to full term, accompanied by pictures or video segments representing the
222 development of an unborn child at those gestational increments. The descriptions shall include
223 information about brain and heart function and the presence of external members and internal
224 organs during the applicable stages of development. Any pictures used shall contain the
225 dimensions of the fetus and shall be realistic and appropriate for that woman's stage of
226 pregnancy. The materials shall be designed to convey accurate scientific information about an
227 unborn child at the various gestational ages, and to convey the state's preference for childbirth
228 over abortion;

229 (c) truthful, nonmisleading descriptions of abortion procedures used in current medical
230 practice at the various stages of growth of the unborn child, the medical risks commonly
231 associated with each procedure, including those related to subsequent childbearing, the
232 consequences of each procedure to the fetus at various stages of fetal development, the possible
233 detrimental psychological effects of abortion, and the medical risks associated with carrying a
234 child to term;

235 (d) any relevant information on the possibility of an unborn child's survival at the
236 two-week gestational increments described in Subsection (1)(b);

237 (e) information on the availability of medical assistance benefits for prenatal care,
238 childbirth, and neonatal care;

239 (f) a statement conveying that it is unlawful for any person to coerce a woman to
240 undergo an abortion;

241 (g) a statement conveying that any physician who performs an abortion without
242 obtaining the woman's informed consent or without according her a private medical
243 consultation in accordance with the requirements of this section, may be liable to her for
244 damages in a civil action at law;

245 (h) a statement conveying that the state of Utah prefers childbirth over abortion; and

246 (i) information regarding the legal responsibility of the father to assist in child support,
247 even in instances where he has agreed to pay for an abortion, including a description of the
248 services available through the Office of Recovery Services, within the Department of Human

249 Services, to establish and collect that support.

250 (2) (a) The materials described in Subsection (1) shall be produced and printed in a
251 way that conveys the state's preference for childbirth over abortion.

252 (b) The printed material described in Subsection (1) shall be printed in a typeface large
253 enough to be clearly legible.

254 (3) Every facility in which abortions are performed shall immediately provide the
255 printed informed consent materials and a viewing of or a copy of the informational video
256 described in Subsection (1) to any patient or potential patient prior to the performance of an
257 abortion, unless the patient's attending or referring physician certifies in writing that he
258 reasonably believes that provision of the materials or video to that patient would result in a
259 severely adverse effect on her physical or mental health.

260 (4) The Department of Health shall produce a standardized videotape that may be used
261 statewide, containing all of the information described in Subsection (1), in accordance with the
262 requirements of that subsection and Subsection (2). In preparing the video, the department may
263 summarize and make reference to the printed comprehensive list of geographically indexed
264 names and services described in Subsection (1)(a). The videotape shall, in addition to the
265 information described in Subsection (1), show an ultrasound of the heart beat of an unborn
266 child at three weeks gestational age, at six to eight weeks gestational age, and each month
267 thereafter, until 14 weeks gestational age. That information shall be presented in a truthful,
268 nonmisleading manner designed to convey accurate scientific information, the state's
269 preference for childbirth over abortion, and the positive aspects of adoption.

270 (5) The Department of Health and local health departments shall provide ultrasounds in
271 accordance with the provisions of Subsection 76-7-305(1)(b), at no expense to the pregnant
272 woman.

273 (6) The Department of Health shall compile and report the following information
274 annually, preserving physician and patient anonymity:

275 (a) the total amount of informed consent material described in Subsection (1) that was
276 distributed;

277 (b) the number of women who obtained abortions in this state without receiving those
278 materials;

279 (c) the number of statements signed by attending physicians certifying to his opinion

280 regarding adverse effects on the patient under Subsection (3); and

281 (d) any other information pertaining to protecting the informed consent of women

282 seeking abortions.

283 ~~[(7) The Department of Health shall annually report to the Health and Human Services~~

284 ~~Interim Committee regarding the information described in Subsection (6), and provide a copy~~

285 ~~of the printed materials and the videotape produced in accordance with this section to that~~

286 ~~committee.]~~

287 Section 8. **Repealer.**

288 This bill repeals:

289 Section **26-18-3.7, Prepaid health care delivery systems.**

290 Section **26-18-401, Medicaid waiver.**